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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 325

COLUMBIA PROPERTIES, INCORPORATED,
Appellant,

vs.

STATE BOARD OF TAX COMMISSIONERS OF THE STATE OF INDIANA, NOBLE W. HOLLAR, FRANK G. THOMPSON, AND ADOLPH L. FOSSLER, ETC., ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF INDIANA

STATEMENT OF COUNTY BOARD OF REVIEW OF VANDERBURGH COUNTY, ET AL. OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

WILLIAM C. WELBORN,
MILFORD M. MILLER,
Counsel for Appellees.

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No. 325

COLUMBIA PROPERTIES, INCORPORATED,
Appellant,

vs.

STATE BOARD OF TAX COMMISSIONERS OF THE STATE OF INDIANA,
NOBLE W. HOLLAR, FRANK G. THOMPSON AND ADOLPH L. FOSSLER, Members of the State Board of Tax Commissioners of the State of Indiana,
COUNTY BOARD OF REVIEW OF VANDERBURGH COUNTY, STATE OF INDIANA,
OSCAR H. SCHMIDT, OTTO H. MEYER, EDWARD L. GOEBEL, JAMES R. DUNCAN, AND CHARLES GRISSOM, Members of the County Board of Review of Vanderburgh County, State of Indiana,
OSCAR H. SCHMIDT, County Assessor of Vanderburgh County, State of Indiana,
MARTIN FULLING, Township Assessor of Knight Township, Vanderburgh County, State of Indiana,
OTTO H. MEYER, County Auditor of Vanderburgh County, State of Indiana,
EDWARD L. GOEBEL, County Treasurer of Vanderburgh County, State of Indiana,
ROBERT C. KOLLKER, County Assessor of Vanderburgh County, State of Indiana,

JOHN A. ELLERT, County Auditor of Vanderburg County, State of Indiana,
ROBERT C. KOLLKER, JOHN A. ELLERT, AND JOHN J. BOINK, Members of the County Board of Review of Vanderburgh County, State of Indiana,
CLYDE OVIATT, County Treasurer of Vanderburgh County, State of Indiana,
CLYDE OVIATT, Member of the County Board of Review of Vanderburgh County, State of Indiana,

Appellees

STATEMENT OF GROUNDS IN OPPOSITION TO THE APPELLATE JURISDICTION

The appellees, County Board of Review of Vanderburgh County, State of Indiana, Oscar H. Schmidt, Otto H. Meyer, Edward L. Goebel, James R. Duncan, and Charles Grisson, Members of the County Board of Review of Vanderburgh County, State of Indiana, Oscar H. Schmidt, County Assessor of Vanderburgh County, State of Indiana, Martin Fulling, Township Assessor of Knight Township, Vanderburgh County, State of Indiana, Otto H. Meyer, County Auditor of Vanderburgh County, State of Indiana, Edward L. Goebel, County Treasurer of Vanderburgh County, State of Indiana, Robert C. Kollker, County Assessor of Vanderburgh County, State of Indiana, John A. Ellert, County Auditor of Vanderburgh County, State of Indiana, Robert C. Kollker, John A. Ellert, and John J. Boink, Members of the County Board of Review of Vanderburgh County, State of Indiana, Clyde Oviatt, County Treasurer of Vanderburgh County, State of Indiana, Clyde Oviatt, Member of the County Board of Review of Vanderburgh County, State of Indiana, state the following matters and grounds against the appellate jurisdiction of this Court as asserted by the appellant herein, in its statement of the

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basis of the appellate jurisdiction, filed herein on the 31st day of July, 1953, and served on these appellees herein on the 3rd day of August, 1953, as required by Rule 12 of the Supreme Court.

The statute relied on by appellant herein to sustain the appellate jurisdiction of this court, 28 U.S.C. 1257, which provides:—

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> • • • • • • •
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity. . . ."

is not applicable to this case for the following reasons:—

A. There is not drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States.

B. The decision of the Supreme Court of Indiana appealed from herein is not in favor of the validity of any statute of a state drawn in question herein.

C. The questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

A

There Is Not Drawn in Question the Validity of a Statute of Any State on the Ground of Its Being Repugnant to the Constitution, Treaties or Laws of the United States.

1. The gist of the appellants' action is to set aside tax assessments on its real estate improvements on the ground that the Board of Review of Vanderburgh County, Indiana,

and the State Board of Tax Commissioners of the State of Indiana, in reassessing appellant's 45 apartment properties under the laws of the State of Indiana (Acts 1949, Chap. 225, p. 722) Burns' Indiana Statutes Annotated, Sec. 64-1019, n. —, 1951 Replacement) graded these improvements "arbitrarily, capriciously, wrongfully, unlawfully, illegally and without reasonable basis in fact" as "average" rather than "low cost", contrary to said state statute and contrary to the Real Estate Assessment Guide approved and adopted by the State Board of Tax Commissioners of the State of Indiana, pursuant to said state statutes. The appellant claimed it had been denied a judicial hearing on the assessments and that the assessments were not uniform and equal with the assessments of other property owners, all contrary to the Fourteenth Amendment to the Constitution of the United States.

2. The appellant's Amended Petition in Appeal and Amended Complaint (Exhibit B to Appellant's "Statement as to Jurisdiction") fails to disclose any allegation therein asserting the invalidity of any state statute, rule or regulation on either a state or federal ground. Appellant's attack therein was directed to the manner and method of the grading of its improvements for tax assessment purposes and objection to the ensuing assessment thereof and thereon which are matters touching the administration of state laws rather than asserting their invalidity.

3. The appellant's assignment of errors on appeal to the Supreme Court of Indiana (Exhibit C to appellant's "Statement as to Jurisdiction") do not in any manner challenge the validity of any state statute but rather questions the observance of a state statute and the exercise of authority thereunder.

It is essential to the appellate jurisdiction of the Supreme Court of the United States under 28 U.S.C. Section 1257(2)

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that there be an explicit and timely insistence in the state courts that a state statute, as applied is repugnant to the Federal Constitution.

Charleston Fed. Sav. & L. Assn. v. *Alderson* (1944), 324 U.S. 182, 89 L. Ed. 857.

The purpose of the rule is to make certain that no judgment of a state court will be reviewed on appeal by the Supreme Court unless the highest court of the state has first been apprised that a state statute is being assailed as invalid on federal grounds.

Wilson v. *Cook* (1945), 327 U.S. 474, 90 L. Ed. 793;
Charleston Fed. Sav. & L. Assn. v. *Alderson* (1945) 324 U.S. 182, 185, 186, 89 L. Ed. 857, 860, 861.

and until it has opportunity authoritatively to construe it.

Fiske v. *Kansas* (1927), 274 U.S. 380, 71 L. Ed. 1108.

There was, therefore, no challenge by the appellant before the Supreme Court of Indiana of the validity of any statute upon a claim that it was repugnant to the Federal Constitution.

4. In the trial court these appellees filed a demurrer to appellant's Amended Petition in Appeal and Amended Complaint on the grounds that appellant's pleading failed to state facts sufficient to constitute a cause of action against these appellees and that the court had no jurisdiction of the subject matter of the action. The demurrer was sustained and appellant refusing to plead over or to further amend its Amended Petition in Appeal and Amended Complaint, final judgment was rendered against it from which judgment appellant appealed to the Supreme Court of Indiana assigning as error the sustaining of the demurrer as well as other purported errors (Exhibit C, Appellant's Statement as to Jurisdiction).

The appellant upon the sustaining of appellees' demurrer had the statutory right to plead over,

Burns Indiana Statutes Annotated, 1933, Vol. 2, Pt. 1, Sec. 2-1010 (1946 Repl.),

and to allege the "real facts" of its purported action,

Royal Ins. Co. v. *Stewart* (1921), 190 Ind. 444, 455, 129 N.E. 853.

B

The Decision of the Supreme Court of Indiana Appealed from Herein Is Not in Favor of the Validity of Any Statute of a State Drawn in Question Herein.

1. The decision of the Supreme Court of Indiana (Exhibit "A" to appellant's Statement as to Jurisdiction) affirmed the decision of the trial court in sustaining the demurrer and rendering judgment against the appellant. No question having been presented to the Supreme Court of Indiana drawing in question the validity of any state statute on the ground of its being repugnant to the Constitution or laws of the United States, the opinion of the court on its face shows that the court did not in fact consider or decide any such question.

The opinion intimates that appellant's objection was made to the administration of the assessing statutes of Indiana but it nowhere indicates that the appellant contended that, as applied, the statutes were invalid as repugnant to the Federal Constitution, but this will not sustain an appeal to this court under 28 U.S.C. 1257(2).

Charleston Fed. Sav. & L. Assn. v. *Alderson* (1944), 324 U.S. 182, 185, 186, 89 L. Ed. 857, 860, 861, and cases therein cited;

Memphis Natural Gas Co. v. *Beeler* (1941), 315 U.S. 649, 650, 86 L. Ed. 1090, 1093;

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Wilson v. *Cook* (1945), 327 U.S. 474, 90 L. Ed. 793;
Board of Supervisors v. *Santa Cruz R. Co.* (1883), 111 U.S. 361, 28 L. Ed. 456, 457.

It is jurisdictional with this court on appeal that appellant show affirmatively not only that a federal question was presented for decision by the highest court of the state, but that its decision was necessary to the determination of the cause, that the question was actually decided or that the judgment as rendered could not have been given without deciding it.

County of Cook v. *Calumet and Chicago Canal and Dock Co.* (1890), 138 U.S. 635, 34 L. Ed. 1110, 1115;
Southwestern Bell Tel. Co. v. *Oklahoma* (1937), 303 U.S. 206, 212, 213, 82 L. Ed. 751, 755;
Brown v. *Atwell* (1875), 92 U.S. 327, 23 L. Ed. 511, 512, 513.

It is not sufficient to show that such a federal question might have arisen and been applicable to the case, unless it appears in the record that it did arise and was applied by the state court in disposing of the controversy.

Steines v. *Franklin County* (1871), 81 U.S. 15, 20 L. Ed. 846, 848,
Hagar v. *California* (1878), 97 U.S. 361, 24 L. Ed. 1044.

If appellant believed that any state statute was unconstitutional or invalid because of conflict with the Federal Constitution, it could and should have said so.

First Nat. Bank v. *Estherville* (1909), 215 U.S. 341, 348, 54 L. Ed. 223, 228.

2. The decision of the Supreme Court of Indiana in this cause was rendered on a purely non-federal ground and even had there been a federal question involved, the decision is broad enough to sustain the judgment and hence is

not subject to review by this court unless it is believed so plainly unfounded that it may be regarded as essentially arbitrary or a mere device to prevent the review of a decision upon a federal question.

McCoy v. *Shaw* (1927), 277 U.S. 302, 303, 72 L. Ed. 891, 892;

Henderson Bridge Co. v. *City of Henderson* (1891), 141 U.S. 679, 35 L. Ed. 900, 904.

3. These appellees are not of course contending that this court is precluded from determining whether there is in reality any federal question involved by virtue of the decision of the state court on what these appellees believe to be purely non-federal grounds, but are asserting that the decision not only apparently is but can and should be rested on solely local and non-federal questions according to the decisions of both the State of Indiana and this court.

This court has said in *Vandalia R. Co.* v. *Indiana ex rel. South Bend* (1907), 207 U.S. 359, 52 L. Ed. 246, 248, 249:

> "Now, the construction of a pleading, the meaning to be given to its various allegations . . . are as a rule, local questions. . . . The construction placed by that court upon the pleading was a reasonable one. We think it must be held that the decision by the Supreme Court of the state was placed upon a sufficient non-federal ground, and therefore the writ of error is dismissed."

This court has said concerning a federal question:

> ". . . if a decision of such a question is rendered unnecessary by the view which the (state) court properly takes of the rest of the case within the scope of the pleadings, the judgment is not open to review here."
>
> *Chapman* v. *Crane* (1887), 123 U.S. 540, 31 L. Ed. 235, 238 (citing cases).

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This court has said further in *Atlantic Coast Line R. Co. v. Phillips* (1946), 332 U.S. 168, 170, 91 L. Ed. 1977, 1979:

> "But while it is true that we are not bound by the construction of local statutes by the local courts in deciding the Constitutional question, 'yet when we are dealing with a matter of local policy, like a system of taxation, we should be slow to depart from their judgment, if there was no real oppression or manifest wrong in the result.' *New York ex rel. Clyde v. Gilchrist*, 262 US 94, 97, 67 L. Ed. 883, 893, 43 S. Ct. 501."

Concerning what facts in a pleading are to be admitted upon demurrer, this court has said:

> ". . . the demurrer admits only the facts which are well pleaded; that it does not admit the accuracy of an alleged construction of an instrument when the instrument is set forth in the record, if the alleged construction is not supported by the terms of the instrument." citing cases.
>
> "Mere averments of a legal conclusion are not admitted by a demurrer unless the facts and circumstances set forth are sufficient to sustain the allegation." citing cases.
>
> *Gould v. Evansville and C. R. R. Co.* (1875), 91 U.S. 526, 23 L. Ed. 416.

This court has further ruled that where a demurrer for want of facts to constitute a sufficient cause of action has been interposed and sustained in a tax recovery case involving exemption of United States securities in which was set up the assessment proceedings and the efforts of the taxpayer to prevent it, the state court did not actually determine the validity of the tax, saying:

> "But this does not appear either affirmatively or by necessary intendment. For the case may have been decided on the form of remedy which the practice re-

quired the plaintiff to adopt, or on the technical insufficiency of the pleading.

In this uncertainty of the record as an indication, we might without going further, dismiss the case on that ground.

* * * * * * *

Undoubtedly the Court of Appeals of New York is the proper tribunal to decide this question, and as one of policy in the embarrassing matter of contesting tax levies, it is within the province of the state law; and we are not authorized in this case to say that the court did not decide it correctly, or that it made any decision adverse to the exemption of the securities of the United States from state taxation."

Commercial Bank v. *Rochester* (1872), 82 U.S. 639, 21 L. Ed. 117.

4. The decision of the Supreme Court of Indiana in this cause applies the case of *Peden* v. *Board of Review of Cass County* (1935), 208 Ind. 215, 195 N.E. 87, holding that under Article 3 Section, Constitution of Indiana, the courts may not take over the functions of the administrative department of government; but the right of appeal to the courts does exist when a judicial question is presented; that a judicial question is raised only when (p. 227):

"facts are presented in a proper proceeding which shows fraud, corruption, dishonesty, and capriciousness on the part of the one fixing the value, or if it is shown that the law, under which the value is fixed, is invalid and unconstitutional . . ."

The Supreme Court of Indiana in the instant case then in conformity to well-established Indiana decisions held that the alleged actions of the appellees, in the assessing of appellant's improvements, characterized only as committed "arbitrarily, capriciously, wrongfully, unlawfully,

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illegally and without reasonable basis in fact" failed to allege facts sufficient to constitute a judicial action.

Stuck v. *Town of Beech Grove* (1929), 201 Ind. 78, 166 N.E. 153;

Greathouse v. *Board* (1926), 198 Ind. 95, 108;

Public Service Comm. v. *Indianapolis* (1922), 193 Ind. 37, 61, 137 N.E. 705.

5. The appellant's assignment of errors in this court as well as those in the state court which are made Exhibit C to appellant's "Statement as to Jurisdiction" while not directly attacking the validity of a state statute as repugnant to the Federal Constitution do state in effect that the Supreme Court of Indiana by its decision in this case necessarily construed the Indiana Property Tax Assessment Statutes so as

(1) to deny appellant a judicial hearing in connection with the assessment on its property, thereby depriving him of his property without due process of law, contrary to the Federal Constitution.

(2) to authorize an intentional, purposeful and arbitrary discrimination in the assessment of appellant's property when compared with other similar properties in the same locality, thereby denying to appellant the equal protection of the laws in violation of the Federal Constitution.

6. The first assignment of error in this court is merely the conclusion of the Appellant predicated on an unreasonable hypothesis of the effect of the decision of the state court when it is measured by the allegations of appellant's Amended Petition in Appeal and Amended Complaint (Exhibit B, appellant's "Statement as to Jurisdiction").

The appellant's pleading alleges:

1. Notification of reassessment received by plaintiff under notice from township assessor of value of each set of improvements at $10,930 (P. 7(a)).

2. Plaintiff appealed to County Board of Review of Vanderburgh County, Indiana, from said assessment. Plaintiff appeared before the County Board of Review. This Board took the appeal under advisement, and caused inquiry to be made of the State Board of Tax Commissioners as to the correct method of computing percentage point index. State Board of Tax Commissioners made reply to the said inquiry giving instructions as to the proper computation method to be used (P. 7(b)).

3. County Board changed the assessment on each of the 45 sets of improvements to the value of $8,860 each. In making the change in said assessments, the said County Board followed the instructions of the State Board of Tax Commissioners in the computation of the percentage point index. Plaintiff was notified of said change in assessment of the improvements by notices entitled "Corrected Notice by the Board of Review" (P. 7(c)).

4. Plaintiff appeared again before the County Board of Review in order to present evidence that the improvements should be graded "low cost" rather than "average". The plaintiff presented detailed evidence as to the reasons why the said improvements should be graded "low cost" rather than "average". Thereafter, the County Board of Review changed the assessment on each set of improvements to $8,700. The Board notified the plaintiff of this change by letter, which letter stated that the final assessment would be $8,700.00 for each of the 45 sets of improvements (P. 7(d)).

5. The plaintiff then appealed the assessment on each of said improvements to the State Board of Tax Commissioners. Plaintiff appeared before representatives of the Board and presented detailed evidence as to the reasons why the said improvements should be graded as "low cost" rather than "average." The matter taken under

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advisement. Plaintiff received notice from the State Board that it declined to change the assessments as fixed by the Board of Review. Plaintiff again appeared before the State Board and renewed its contention that the improvements should be graded "low cost" rather than "average." State Board then again notified plaintiff that no change would be made in the assessments (P. 7(e)).

There is no allegation that appellant was denied a full hearing or an opportunity to confront and cross-examine opposing witnesses and to hear and refute their testimony nor is there any allegation that appellant demanded such.

Appellant has therefore shown by the allegations of its own Complaint that it was accorded its full constitutional rights and that there was no denial of appellant's constitutional rights by the Supreme Court of Indiana.

Pittsburgh C. C. & St. L. R. Co. v. *Backus* (1893), 154 U.S. 421, 425, 426, 427, 431, 38 L. Ed. 1031, 1036, 1038, 1039;

Cincinnati N. O. and T. P. R. R. Co. v. *Kentucky* (1885), 115 U.S. 321, 29 L. Ed. 414;

Palmer v. *McMahon* (1889), 133 U.S. 660, 33 L. Ed. 772, 775, 776.

6. The second assignment of error in this court is similarly an erroneous conclusion as to the effect of the decision of the State Court appealed from.

Appellant's Complaint alleges in paragraph 8(b) that there are two apartment properties in Vanderburgh County, Indiana, which are "comparable" to appellant's improvements and "identical in size" and "similar in design", both of which were assessed at a lower value—that one of these was constructed in 1941 and graded "average" and the other which was built at "approximately" the same time as appellant's apartment was graded "low cost", and that by virtue of these allegations, the appellant has been

discriminated against by the assessing authorities "as to compel the conclusion" that the assessments resulted from an intentional and purposeful discrimination as well as a disregard of the laws, rules, etc.

The appellant's pleading studiously avoids any direct allegation of intentional or purposeful discrimination by the assessing authorities. As stated by Mr. Chief Justice Stone in *Snowden* v. *Hughes* (1943), 321 U.S. 1, at pages 8 and 9, 88 L. Ed. 497, 503 and 504, in speaking of the failure of state taxing officials to assess property for taxation on a uniform standard of valuation as required by the assessment laws:

> "But a discriminatory purpose is not presumed."
>
> * * * * * * *
>
> "It is not enough to establish a denial of equal protection that some are assessed at a higher valuation than others. The difference must be due to a purposeful discrimination . . . the same as though the discrimination were incorporated in and proclaimed by the statute." citing cases.
>
> * * * * * * *
>
> "A construction of the equal protection clause which would find a violation of federal rights in every departure by state officers from state law is not to be favored."

In a concurring opinion in the above case by Mr. Justice Frankfurter, it was said (321 U.S. 8 at p. 15, 88 L. Ed. 497 at p. 507):

> "The talk in some of the cases about systematic discrimination is only a way of indicating that in order to give rise to a constitutional grievance, a departure from a norm must be rooted in design and not derive merely from error or fallible judgment."

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Speaking for this court Mr. Justice Brewer stated in *New York ex rel. Brooklyn City R. Co.* v. *State Board of Tax Commrs.* (1904), 199 U.S. 48, 52, 50 L. Ed. 79, 85, concerning valuation of property:

> "It will not do to say that the valuation of a piece of property is mere guesswork. True, it is often largely a matter of opinion and mathematical exactness is not always possible. Various elements enter into and affect an opinion respecting the value of a given piece of property, and all that can be required is that the assessing board exercise an honest judgment, based upon the information it possesses or is able to acquire. That valuation is of the property as a totality, and it is unnecessary in making an assessment to disintegrate the various elements which enter into it, and ascribe to each its separate fraction of value. Oftentimes the combination itself is no inconsiderable factor in creating the value."

It was said in *Cleveland C. C. & St. L. R. Co.* v. *Backus* (1893), 154 U.S. 421, 436, 38 L. Ed. 1031, 1040:

> "A comparison of the assessment placed by the Board upon the property of this plaintiff with that placed by it upon other roads . . . within the state is immaterial unless coupled with an offer to show an identity in value."

The Complaint in this cause does not allege similarity or identity of value in the properties compared.

In *Lawrence* v. *State Tax Comm.* (1931), 286 U.S. 276 at pages 284-285, 76 L. Ed. 1102, 1108, this court has said:

> ". . . possible differences in tax burdens not shown to be substantial or which are based on discriminations not shown to be arbitrary or capricious, do not fall within constitutional prohibitions." (citing cases)

See also *Welch* v. *Henry* (1938), 305 U.S. 134, 83 L. Ed. 87.

Other cases sustaining these appellees' position are:

Chicago B. & Q. R. Co. v. *Babcock* (1906), 204 U.S. 585, 51 L. Ed. 636;

Rowley v. *Chicago N. W. R. Co.* (1934), 293 U.S. 102, 79 L. Ed. 222;

Sioux City Bridge Co. v. *Dakota* (1922), 260 U.S. 441, 67 L. Ed. 340;

Southern Ry. Co. v. *Watts* (1922), 260 U.S. 519, 67 L. Ed. 375;

Sunday Lake Iron Co. v. *Wakefield* (1917), 247 U.S. 350, 62 L. Ed. 1154.

The Complaint falls far short of alleging an intentional violation of the essential principle of practical uniformity.

C

The Questions on Which the Decision of the Cause Depends Are So Unsubstantial As Not to Need Further Argument

It is respectfully submitted that the questions on which the decision of this cause depends are not substantial federal questions and do not require further argument as shown by the following decisions of this court.

Zucht v. *King* (1922), 260 U.S. 174, 67 L. Ed. 194;

Wilson v. *Cook* (1945), 327 U.S. 474, 90 L. Ed. 793;

Charleston Fed. Sav. & L. Assn. v. *Alderson* (1944), 324 U.S. 182, 89 L. Ed. 857;

Colgate v. *Harvey* (1935), 296 U.S. 404, 80 L. Ed. 299;

Sunday Lake Iron Co. v. *Wakefield* (1917), 247 U.S. 350, 62 L. Ed. 1154.

Chicago B. & Q. R. Co. v. *Babcock* (1906), 204 U.S. 585, 51 L. Ed. 636;

Cleveland C. C. & St. L. R. Co. v. *Backus* (1893), 154 U.S. 421, 38 L. Ed. 1031;

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Southern Ry. Co. v. *Watts* (1922), 260 U.S. 519, 67 L. Ed. 375;
Rowley v. *Chicago & N. W. R. Co.* (1934), 293 U.S. 102, 79 L. Ed. 222;
Sioux City Bridge Co. v. *Dakota County* (1922), 260 U.S. 441, 67 L. Ed. 340;
Stanley v. *Board of Supervisors* (1886), 121 U.S. 535, 30 L. Ed. 1000;
Snowden v. *Hughes* (1943), 321 U.S. 1, 88 L. Ed. 497.
Palmer v. *McMahon* (1889), 133 U.S. 660, 33 L. Ed. 772;
Cincinnati N. O. and T. P. R. Co. v. *Kentucky* (1885), 115 U.S. 321, 29 L. Ed. 414;
Bell's Gap Railroad Co. v. *Pennsylvania* (1889), 134 U.S. 232, 33 L. Ed. 892.

It is, therefore, submitted that this court should dismiss the appeal herein or in the alternative affirm the decision of the Supreme Court of Indiana.

Respectfully submitted,

WILLIAM C. WELBORN,
MILFORD M. MILLER,
502 Court Bldg.,
Evansville, Indiana,
Counsel for Above Named Appellees.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 325

COLUMBIA PROPERTIES, INC.,

Appellant,

v.

STATE BOARD OF TAX COMMISSIONERS OF THE STATE OF INDIANA,

NOBLE W. HOLLAR, FRANK G. THOMPSON, and ADOLPH L. FOSSLER, Members of the State Board of Tax Commissioners of the State of Indiana,

COUNTY BOARD OF REVIEW OF VANDERBURGH COUNTY, STATE OF INDIANA,

OSCAR H. SCHMIDT, OTTO H. MEYER, EDWARD L. GOEBEL JAMES R. DUNCAN, and CHARLES GRISSOM, Members of the County Board of Review of Vanderburgh County, State of Indiana,

OSCAR H. SCHMIDT, County Assessor of Vanderburgh County, State of Indiana,

MARTIN FULLING, Township Assessor of Knight Township, Vanderburgh County, State of Indiana,

OTTO H. MEYER, County Auditor of Vanderburgh County, State of Indiana,

EDWARD L. GOEBEL, County Treasurer of Vanderburgh County, State of Indiana,

ROBERT C. KOLLKER, County Assessor of Vanderburgh County, State of Indiana,

JOHN A. ELLERT, County Auditor of Vanderburgh County, State of Indiana,
ROBERT C. KOLLKER, JOHN A. ELLERT, and JOHN J. BOINK, Members of the County Board of Review of Vanderburgh County, State of Indiana,
CLYDE OVIATT, County Treasurer of Vanderburgh County, State of Indiana,
CLYDE OVIATT, Member of the County Board of Review of Vanderburgh County, State of Indiana,

Appellees.

MOTION TO DISMISS OR AFFIRM APPEAL

Come now County Board of Review of Vanderburgh County, State of Indiana, Oscar H. Schmidt, Otto H. Meyer, Edward L. Goebel, James R. Duncan, and Charles Grissom, Members of the County Board of Review of Vanderburgh County, State of Indiana, Oscar H. Schmidt, County Assessor of Vanderburgh County, State of Indiana, Martin Fulling, Township Assessor of Knight Township, Vanderburgh County, State of Indiana, Otto H. Meyer, County Auditor of Vanderburgh County, State of Indiana, Edward L. Goebel, County Treasurer of Vanderburgh County, State of Indiana, Robert C. Kollker, County Assessor of Vanderburgh County, State of Indiana, John A. Ellert, County Auditor of Vanderburgh County, State of Indiana, Robert C. Kollker, John A. Ellert, and John J. Boink, Members of the County Board of Review of Vanderburgh County, State of Indiana, Clyde Oviatt, County Treasurer of Vanderburgh Couny, State of Indiana, Clyde Oviatt, Member of the County Board of Review of Vanderburgh County, State of Indiana, appellees herein, by William C. Welborn and

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Milford M. Miller, their counsel, and move this court to dismiss with costs the appeal taken herein to this court by Columbia Properties, Inc., upon the following grounds:—

1. There is not drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States.

2. The decision of the Supreme Court of Indiana appealed from herein; is not in favor of the validity of any statute of a state drawn in question herein.

In the alternative, these appellees move the court to affirm the decision of the Supreme Court of Indiana herein, on the following ground:

1. The questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

This motion is filed with these appellees' "Statement of Grounds in Opposition to the Appellate Jurisdiction."

WILLIAM C. WELBORN,
MILFORD M. MILLER,
502 Court Bldg.,
Evansville, Indiana.

Counsel for above Named Appellees.